



T-Mobile USA, Inc.
601 Pennsylvania Avenue, Washington, DC 20004

January 30, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: WT Docket No. 10-208: Universal Service Reform – Mobility Fund
WC Docket No. 10-90: Connect America Fund**

Dear Ms. Dortch:

On December 26, 2018, the Rural Wireless Association, Inc. (“RWA”) filed an “Informal Request for Commission Action”¹ in which it reiterated inaccurate claims regarding T-Mobile USA, Inc.’s (“T-Mobile’s”) ² Mobility Fund Phase II (“MF-II”) 4G LTE coverage maps. The Informal Request is untimely and procedurally defective, warranting no action by the Commission or, at most, a swift rejection. Furthermore, the filing should be ignored or rejected because it contains information obtained through violations of the Commission’s Customer Proprietary Network Information (“CPNI”) rules. Finally, the filing repeats arguments motivated by self interest in delaying the MF-II auction process, as T-Mobile has already explained.³

RWA’s Filing Is Procedurally Improper

As a threshold matter, RWA’s Informal Request is procedurally improper. The filing not only falls outside of the MF-II challenge process the Commission adopted for resolving coverage disputes,⁴ but also relies on a section of the Commission’s rules not applicable for these purposes. RWA’s Informal Request is an untimely request for review or reconsideration of the

¹ See Informal Request for Commission Action of RWA, WC Docket No. 10-90 & WT Docket No. 10-208 (Dec. 26, 2018) (“*Informal Request*”).

² T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

³ See Letter from Kathleen O’Brien Ham, Senior Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 & WC Docket No. 10-90 (Dec. 14, 2018) (“T-Mobile Dec. 14 Letter”).

⁴ *In re Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6296-98, ¶¶ 27-33 (2017) (“*MF-II Challenge Process Order*”).

challenge process the Commission adopted in the *MF-II Challenge Process Order*. RWA appears to be asking the Commission to restart the entire challenge process by requesting that T-Mobile resubmit its MF-II coverage data—almost a year after T-Mobile submitted its initial 4G LTE coverage data. Not only would such action overturn months of hard work and multiple decisions by the Commission, but it also would cause unnecessary delay in starting an MF-II auction.

The Commission should let the challenge process proceed as adopted and not let RWA try to rewrite the Commission's rules. T-Mobile has no way of knowing if any of the RWA members even submitted a certified challenge for the areas in question, and the Commission has not yet opened the challenge process response window to enable T-Mobile to view and respond to certified challenges. Nor is there any basis for the Commission to investigate "the timing of T-Mobile's cell sites built in rural areas in the past three years," as RWA requests⁵ since, as T-Mobile has explained, T-Mobile followed required procedures and submitted shapefiles reflecting 4G LTE coverage as of December 2017.⁶

RWA's reliance on Section 1.41 of the Commission's rules is also inappropriate. Section 1.41 permits informal requests for Commission action where formal procedures are not required.⁷ Indeed, the Commission has expressly acknowledged that Section 1.41 allows for informal requests only "where the form for requesting the relief sought is not otherwise provided by the rules."⁸ In particular, the Commission has explained that Section 1.41 "offers an avenue of recourse to parties who might otherwise have none," yet, the Commission cautions, it "is not an invitation to dilatoriness or gamesmanship in presenting arguments to the Commission."⁹ Moreover, the Commission has "regularly decline[d] to consider 'informal' requests for Commission action under Section 1.41 when there are formal procedures available to the requesting parties."¹⁰ Section 1.41 cannot be used as a vehicle for disgruntled parties to "sidestep

⁵ See *Informal Request* at i, 16.

⁶ See T-Mobile Dec. 14 Letter.

⁷ 47 C.F.R. § 1.41 ("Except where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally." (emphasis added)).

⁸ *In re Global Cellular Communication, Inc. Application for Authority to Construct and Operate a Nationwide, Commercial 220 MHz SMR System*, Order, 8 FCC Rcd 8197, 8197 ¶ 2 (1993).

⁹ *In re Warren C. Havens Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas*, Memorandum Opinion and Order, 28 FCC Rcd 16,261, 16,267-68, ¶ 18 (2013).

¹⁰ *Id.*

Commission procedures and erase past Commission decisions reached consistent with those procedures.”¹¹

The Commission’s rules provide formal procedures for parties seeking reconsideration of Commission actions in both rulemaking and non-rulemaking proceedings.¹² In the case of the MF-II challenge process, the period for seeking reconsideration has long passed. Moreover, the *MF-II Challenge Process Order*, and subsequent Public Notice, establish the procedures for challenging areas that have been deemed ineligible for MF-II support, as well as the Commission’s process for adjudicating such claims.¹³ There is no legal basis or justification for the special process urged by RWA in its Informal Request. The Commission should therefore reject the Informal Request and require RWA and its members to abide by the process the Commission has adopted to challenge areas that have been deemed ineligible for MF-II support, as well as the Commission’s formal procedures for reviewing any final Commission action.

RWA May Have Violated CPNI Rules

RWA’s Informal Request should also be rejected because it contains information obtained in apparent violation of Commission rules designed to protect CPNI. RWA acknowledges that its members reviewed confidential T-Mobile information that they were able to access because T-Mobile is a customer of some of RWA members’ wireline affiliates. For example, RWA states that “challengers with landline telephone company affiliates reviewed

¹¹ *Id.* at 16,269-70, ¶ 20.

¹² 47 C.F.R. § 1.429(a) (“Any interested person may petition for reconsideration of a final action in a [rulemaking proceeding]”); 47 C.F.R. § 1.106(a)(1) (“[P]etitions requesting reconsideration of a final Commission action in non-rulemaking proceedings will be acted on by the Commission.”); *see also* 47 U.S.C. § 405(a) (“After an order, decision, report, or action has been made or taken in any proceeding by the Commission . . . any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for reconsideration.”).

¹³ *See MF-II Challenge Process Order*, 32 FCC Rcd at 6297-98, ¶ 31 (“After the response window closes, Commission staff will adjudicate certified challenges and responses.”); *Procedures for the Mobility Fund Phase II Challenge Process*, Public Notice, 33 FCC Rcd 1985, 2013, ¶ 66 (2018) (“As the Commission determined in the *MF-II Challenge Process Order*, the Bureaus will adjudicate the merits of certified challenges based upon a preponderance of the evidence standard of review, and the challenger will bear the burden of persuasion.”). The Commission recently extended the timeframes for collecting speed test data and responding to a challenge in the MF-II challenge process, further cementing the challenge process as the most appropriate means for addressing any concerns RWA may have with T-Mobile’s MF-II coverage data. What’s more, RWA encouraged the Commission to adopt such an extension. *See In re Universal Service Reform – Mobility Fund*, Third Report and Order, WT Docket No. 10-208, FCC 18-183 ¶¶ 1, 7 (rel. Jan. 3, 2019).

records related to the installation of backhaul circuits at the T-Mobile sites.”¹⁴ This information constitutes CPNI.¹⁵ Under the Commission’s CPNI rules, however, a telecommunications carrier is not permitted to share CPNI with its affiliates or other carriers without customer approval if “a customer does not subscribe to more than one offering by the carrier”¹⁶ and even with a customer’s approval, CPNI may be shared only for *marketing purposes*.¹⁷ T-Mobile has not

¹⁴ *Informal Request* at 15; *see id.* at 8 (“Sagebrush management, who also serve as management of Sagebrush’s affiliated telephone companies, reviewed each telephone company’s circuit installation records to determine if circuits had been installed to support backhaul for T-Mobile’s cell sites in northeastern Montana and Williston, North Dakota.”); *see id.* at 28 (“information related to the timing of PTCI’s [Panhandle Telecommunications Systems, Inc.’s] installation of circuits for T-Mobile cell sites”). T-Mobile has sites where the backhaul is provided currently by Panhandle Telecommunications Systems, Inc. (“Panhandle”) and Nemont.

¹⁵ 47 U.S.C. § 222(h)(1)(A) (defining CPNI as “information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”); *see also* 47 C.F.R. § 64.2003(g) (“The term ‘customer proprietary network information (CPNI)’ has the same meaning given to such term in section 222(h)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(1).”); *In re Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Declaratory Ruling, 28 FCC Rcd 9609, 9611, ¶ 9 (2013) (“Congress, through the Communications Act, requires communications providers to protect consumers’ sensitive personal information to which they have access as a result of their unique position as network operators. Section 222, which became part of the Act in 1996, obligates telecommunications carriers to protect the privacy and security of information about their customers. Its most specific obligations concern CPNI, which is information about a customer’s use of the service that is made available to the carrier by virtue of the carrier/customer relationship. As the Commission has explained, ‘[p]ractically speaking, CPNI includes information such as . . . any services purchased by the consumer’.”).

¹⁶ 47 C.F.R. § 64.2005(a) (“Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (*i.e.*, local, interexchange, and CMRS) to which the customer already subscribes from the same carrier, without customer approval: (1) If a telecommunications carrier provides different categories of service, and a customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier’s affiliated entities that provide a service offering to the customer; (2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI with its affiliates, except as provided in § 64.2007(b).”); *see also* 47 U.S.C. § 222(a) (“Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.”).

¹⁷ 47 C.F.R. § 64.2007(b) (“A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer’s individually identifiable CPNI for the purpose of marketing communications-

approved disclosure of its CPNI among Nemont Communications, Inc. (“Nemont”), Panhandle, and Pine Belt Communications. Furthermore, the Communications Act provides that “[a] telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose.”¹⁸ The unauthorized disclosure of T-Mobile’s CPNI by the wireline affiliates of RWA’s members to their wireless affiliates, and from those entities to RWA, would therefore appear to violate the CPNI rules.

The RWA Request is a Further Attempt to Impede Competition

RWA’s Informal Request would have the effect of further delaying the MF-II auction. The request is not surprising because RWA members have a vested financial interest in delaying the MF-II auction. The three RWA members that have submitted declarations challenging T-Mobile’s MF-II coverage maps are each competitive eligible telecommunications carriers (“CETCs”) that will continue to receive significant frozen Universal Service high cost support (“CETC support”) until the MF-II auction has closed and winning bidders announced.¹⁹ Given the incentive to maintain legacy support, it is clear why RWA has launched a challenge to T-Mobile’s MF-II coverage data and is asking the Commission to require T-Mobile to re-file: grant of this request would have the effect of further delaying the MF-II auction and addition competition—the apparent result RWA wants.

RWA’s Informal Request is consistent with its previous attempts to impede and delay T-Mobile’s entry into geographic areas where RWA members have long provided inferior service

related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer’s individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents and its affiliates that provide communications-related services. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. *Except for use and disclosure of CPNI that is permitted without customer approval under § 64.2005, or that is described in this paragraph, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer’s individually identifiable CPNI subject to opt-in approval.*” (emphasis added)). RWA itself acknowledges that the use of confidential T-Mobile information in the Informal Request is subject to the CPNI rules (*see, e.g., Informal Request* at 15 (“These records are subject to the FCC’s [CPNI] rules and are not being provided at this time.”))—although RWA misapplies those rules to permit partial disclosure.

¹⁸ 47 U.S.C. § 222(b).

¹⁹ *In re Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2182, 2183-84 ¶¶ 69, 72 (2017) (“*MF-II Report and Order*”).

to rural America.²⁰ But T-Mobile's 700 MHz build-out, which RWA seeks to introduce here, has nothing to do with MF-II coverage maps and is irrelevant in this context. In 2016, T-Mobile purchased licenses for then-unused 700 MHz spectrum. As the interim construction requirement was quickly approaching at the time of the license purchase, T-Mobile sought and received waiver of the Commission's rules to meet the interim construction deadline, enabling it to build out a network in eastern Montana, a market that T-Mobile previously had not served, and to supplement its then-existing operations in western Montana.²¹

At every turn, RWA has sought to prevent T-Mobile from obtaining a limited waiver in order to provide service to Montana. RWA opposed T-Mobile's request and once the Commission granted the reasonable relief T-Mobile sought, RWA submitted an Application for Review²² and continued to challenge the Commission's action,²³ even in the face of T-Mobile's submission and Commission acceptance of T-Mobile's demonstration that it was providing service quicker than the Commission required and that its service was vastly superior to anything that the RWA members in the area provided.²⁴

²⁰ RWA member Nemont's Chief Operating Officer has demonstrated the company's position elsewhere: "[i]n order to obtain wireline backhaul facilities at the Scobey cell site, T-Mobile would need to directly or indirectly make a request of Nemont for the installation of a wireline circuit as Nemont is the only wireline local exchange carrier in the area capable of providing this circuit." (emphasis added).

²¹ As part of this decision, T-Mobile was required to provide signal coverage and offer service to at least 40 percent of the geographic area covering each of the three licenses and file the necessary construction notifications with the Commission by January 21, 2018. *See* Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Steve B. Sharkey, T-Mobile License LLC, 31 FCC Rcd 13,379, 13, 384-85 (2016). T-Mobile made the required filings on January 11, 2018, and depicted all the sites supporting the coverage notification, including sites in adjacent license areas as required by the Commission. *See* File No. 0008059621, Call Sign WQJQ805 (Jan. 11, 2018); File No. 0008059626, Call Sign WQJQ806 (Jan. 11, 2018); File No. 0008059617, Call Sign WQJQ807 (Jan. 11, 2018); *see also* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed June 8, 2017); T-Mobile also made required filings on January 17, 2019. *See*, Letter from Steve B. Sharkey, Vice President Government Affairs, Technology and Engineering Policy, FCC, WT Docket No. 16-319 (filed January 17, 2019) and File No. 0008495155, Call Sign WQJQ805 (Jan. 17, 2019); File No. 0008495158, Call Sign WQJQ806 (Jan. 17, 2019); File No. 0008495160, Call Sign WQJQ807 (Jan. 17, 2019).

²² Rural Wireless Association, Inc., Application for Review, WT Docket No. 16-319 (filed Jan. 23, 2017).

²³ *See, e.g.*, Comments of the Rural Wireless Association Opposing Requested Waiver, WT Docket No. 16-319 (filed Oct. 26, 2016).

²⁴ *See, e.g.*, Petitioners' Reply to Comments of the Rural Wireless Association, Inc. WT Docket No. 16-319, at 2 (filed Nov. 7, 2016).

RWA mounted these challenges despite its members' failure to meet their own build out requirements. As T-Mobile has pointed out, RWA's members in Montana appeared not to have met the interim construction requirements for their licenses, despite having had the licenses for six years, and were misrepresenting to customers the type of service they provided.²⁵ T-Mobile therefore called for the Commission to explicitly investigate these misrepresentations, a request on which the Commission has not yet acted.²⁶ Given these carriers' failure to provide reasonable service to the people of Montana, T-Mobile has been widely applauded for providing Montanans with much-needed competition and improved services.²⁷

Now, nearly a year after T-Mobile filed interim construction notifications and these notifications were accepted by the Commission, RWA is at it again—seeking to collaterally challenge the probity of those submissions in an unrelated proceeding. In this case, the executive leadership of RWA, member Nemont, submitted unsupported declarations claiming T-Mobile has lied about constructing sites as part of its interim construction requirement. Even if those declarations were accurate—and they are not—they address only the backhaul capabilities of those sites, not the coverage documented in the Commission-accepted notifications.

²⁵ For example, T-Mobile noted that Nemont had recently submitted a construction notification for station WQQL772 asserting that “[an] LTE RSRP signal level of -124.1 dBm is considered by Nemont and the Huawei Base-station equipment . . . as the appropriate threshold to provide [service],” significantly below the signal levels that T-Mobile provides. T-Mobile noted that the construction notification for that station, and in fact for all of Nemont’s 700 MHz licenses, states that Nemont is providing a fixed 4G LTE service. This permits Nemont to include additional antenna gain of 10 dBi that a mobile service link budget generally does not include, making direct comparisons of link budgets difficult. Nevertheless, that construction notification seems to belie Nemont’s advertising and promotional materials, which suggest that it provides a mobile 4G LTE service. And in fact, Nemont does not advertise the Bandrich Bandlux E500 Fixed Wireless modem or mention the fact that it offers a fixed service on its website or elsewhere. T-Mobile also pointed out that Nemont asserted that 200 KB/S Uplink and 768 KB/S Downlink is a good cell edge minimum throughput value for a commercial LTE fixed wireless RAN but that its design is 6 dB—approximately four times weaker and less than half the downlink speed of what RWA complained was “fringe” coverage. *See* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319, at 2 (filed June 8, 2017).

²⁶ *Id.*

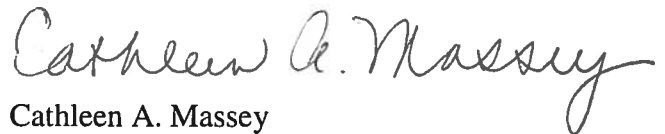
²⁷ Letter from Steve Daines, United States Senator, and Jon Tester, United States Senator, to Chairman Tom Wheeler, FCC (Oct. 6, 2016) (“T-Mobile can quickly deploy [700 MHz] spectrum and bring better service and additional competition to rural areas in Montana.”). In fact, Montana Senator Daines attended the opening of the first T-Mobile store in Montana. *See* Steve Daines (@SteveDaines), TWITTER (Mar. 16, 2017, 3:29 PM), <https://twitter.com/SteveDaines/status/842503205980459008>; *see also* Kevin Maki, Wireless Coverage to be Expanded in Rural Montana, NBC MONTANA (Mar. 16, 2017, 10:05 PM), <http://www.nbcmontana.com/news/keci/wireless-coverage-to-be-expanded-in-rural-montana/399985529>.

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For the reasons stated above, the Commission should ignore or reject RWA's Informal Request. As T-Mobile has made clear, it welcomes the opportunity to respond to certified MF-II challenges at the appropriate time. Until then, the Commission should ignore or dismiss RWA's unsubstantiated arguments.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cathleen A. Massey". The signature is written in dark ink and is positioned above the printed name and title.

Cathleen A. Massey
Vice President, Federal Regulatory

cc: Rosemary Harold
Jeffrey Gee